4-24-2017

City of Findlay v. Testa

Ohio Board of Tax Appeals

OHIO BOARD OF TAX APPEALS

CITY OF FINDLAY, (et. al.),

Appellant(s),

vs.

JOSEPH W. TESTA, TAX COMMISSIONER OF OHIO, (et. al.),

Appellee(s).

CASE NO(S). 2016-587

(EXEMPTION)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - CITY OF FINDLAY
Represented by:
JIM STASCHIAK II
318 DORNEY PLAZA RM 313
FINDLAY, OH 45840

For the Appellee(s) - JOSEPH W. TESTA, TAX COMMISSIONER OF OHIO
Represented by:
BARTON A. HUBBARD
ASSISTANT ATTORNEY GENERAL
OFFICE OF OHIO ATTORNEY GENERAL
30 EAST BROAD STREET, 25TH FL
COLUMBUS, OH 43215

Entered Monday, April 24, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is before the Board of Tax Appeals upon a notice of appeal filed by appellant City of Findlay. Findlay appeals from a final determination of the Tax Commissioner, in which the commissioner granted, in part, the city's application for exemption of real property from taxation, relating to parcels 21-0001029178, 60-000320650, and 60-0001008728, located in Hancock County. Specifically, with regard to parcel 21-0001029178, the commissioner granted exemption for tax year 2014, and remitted all taxes, penalties, and interest paid for that year for the portion of the building located thereon not previously granted exemption. With regard to the remaining two parcels used as a parking lot, the request for exemption was denied, but penalties charged through the date of the final determination relating to such parcels were remitted. This matter is submitted to the board upon the notice of appeal, the statutory transcript ("S.T.") certified to this board by the Tax Commissioner, and any written argument submitted by the parties, as no hearing was requested.

In his final determination, the Tax Commissioner concluded that parcel 21-0001029178 in its entirety qualified for exemption, pursuant to R.C. 5709.08, as used by the city's Public Works Department for operations and storage. S.T. at 1. Previously, exemption for such parcel had been requested, and denied, in part, for the portion of the subject building leased to a for-profit company; no leases were in effect, and the entire building was used by the Public Works Department, for the year under consideration herein. With

regard to the remaining two parcels, the commissioner concluded that because they were used as a parking lot for the city's employees only, which was "not open to the public," they did not qualify for exemption. S.T. at 2.

The findings of the Tax Commissioner are presumptively valid. *Alcan Aluminum Corp. v. Limbach*, 42 Ohio St.3d 121, 123 (1989). Consequently, it is incumbent upon a taxpayer challenging a determination of the Tax Commissioner to rebut that presumption. *Belgrade Gardens v. Kosydar*, 38 Ohio St.2d 135, 143 (1974); *Midwest Transfer Co. v. Porterfield*, 13 Ohio St.2d 138, 142 (1968). Moreover, the taxpayer is assigned the burden of showing in what manner and to what extent the commissioner's determination is in error. *Federated Dept. Stores, Inc. v. Lindley*, 5 Ohio St.3d 213, 215 (1983). When no competent and/or probative evidence is developed and properly presented to the board to establish that the commissioner's determination is "clearly unreasonable or unlawful," the determination is presumed to be correct. *Alcan*, supra, at 123.

The rule in Ohio is that all real property is subject to taxation. R.C. 5709.01. Exemption from taxation is the exception to the rule. *Seven Hills Schools v. Kinney*, 28 Ohio St.3d 186 (1986). The burden of establishing that real property should be exempt is on the taxpayer. Exemption statutes must be strictly construed. *Am. Soc. for Metals v. Limbach*, 59 Ohio St.3d 38 (1991); *Faith Fellowship Ministries, Inc. v. Limbach*, 32 Ohio St.3d 432 (1987); *White Cross Hospital Assn. v. Bd. of Tax Appeals*, 38 Ohio St.2d 199 (1974); *Goldman v. Robert E. Bentley Post*, 158 Ohio St. 205 (1952); *Natl. Tube Co. v. Glander*, 157 Ohio St. 407 (1952); *Willys-Overland Motors, Inc. v. Evatt*, 141 Ohio St. 402 (1943).

The exemption of the subject property was granted pursuant to R.C. 5709.08, which provides in pertinent part that "[r]eal or personal property belonging to the state or United States used exclusively for a public purpose, and public property used exclusively for a public purpose, shall be exempt from taxation." In *Carney v. Cleveland*, 173 Ohio St. 56 (1962), the court outlined three requirements to qualify for exemption under R.C. 5709.08: "'(1) the property must be public property, (2) the use thereof must be for a public purpose, and (3) the property must be used exclusively for a public purpose.'" See also *Columbus City School Dist. Bd. of Edn. v. Zaino*, 90 Ohio St.3d 496, 497 (2001); *City of Parma Heights v. Wilkins*, 105 Ohio St.3d 463, 2005-Ohio-2818. It is undisputed that the subject property constitutes public property, owned by the city of Findlay. Therefore, this board must determine whether such property has been used exclusively for a public purpose.

In *Whitehouse v. Tracy*, 72 Ohio St. 3d 178 (1995), the court cited to *South-Western City Schools Bd. of Edn. v. Kinney*, 24 Ohio St.3d 184 (1986), wherein it previously considered the "exclusively for a public purpose" requirement of R.C. 5709.08. Therein, the court indicated its "inquiry was guided in part by the definition of 'exclusively' contained in former R.C. 5709.121:

> 'Real property *** belonging *** to the state or a political subdivision, shall be considered as used exclusively for *** public purposes by *** the state, or political subdivision, if it is ***:
>
> '***
>
> '(B) *** made available under the direction or control of *** the state, or political subdivision for use in furtherance of or incidental to its *** public purposes and not with the view to profit.'" Id. at 181-182.

Cf. *Miracit Dev. Corp. v. Zaino*, 10th Dist. Franklin No. 04AP-322, 2005-Ohio-1021. Further, the phrase "used exclusively" has been interpreted by the Ohio Supreme Court to mean primary use. *True Christianity Evangelism v. Tracy*, 87 Ohio St.3d 48 (1999).

Through its notice of appeal, the city contests the denial of exemption for the parking lot parcels. In the notice, it explains that the subject gravel parking lot is "not located near any public venues that would

prompt the public to want to park there." Additionally, there was "no signage preventing the public from parking there, nor was the area patrolled by Parking Enforcement." Further, since the commissioner's final determination was issued, "the City *** erected signage to inform the public that the lot is available for public parking when not being used during the course of normal operations by the Public Works Department."

The Supreme Court has had several occasions to consider whether property serving as a parking area is entitled to exemption. For example, in *Bowers v. Akron City Hosp*, 16 Ohio St.2d 94 (1968), syllabus, the court concluded that parking spaces used by hospital patients, visitors and hospital staff, some of which were available on a pay-per-use basis, were entitled to exemption under R.C. 5709.12. See also *Good Samaritan Hosp. v. Porterfield*, 29 Ohio St.2d 25 (1972) (wherein the court relied upon *Bowers* in its conclusion that building materials used in the construction of a parking garage which was used to provide parking for hospital patrons were not subject to sales and use tax under to former R.C. 5739.02(B)(13)); *Consumer Credit Counseling Service of Central Ohio, Inc. v. Lawrence* (July 7, 2000), BTA No. 1999-K-688, unreported.

Also, however, in *State Teachers Retirement Bd. v. Kinney*, 68 Ohio St.2d 195 (1981), the Supreme Court acknowledged and distinguished its prior decisions as follows: "While this court has, in the past, granted exemptions for parking structures, such structures were found essential to the function of the public *facility*, and were accessible to the public using the facility." Id. at 196-197. (Citation and footnote omitted, emphasis sic.) In its syllabus the court ultimately held: "Real property comprising a parking lot owned by the State Teachers Retirement Board and used exclusively by its employees is neither used by the state for 'a public purpose' nor used by the state 'in furtherance of or incidental to its public purposes and not with a view to profit' within the meaning of the language of subsections (A)(2) and (B) of R.C. 5709.121 and 5709.08, and is, therefore, not exempt from taxation."

Thereafter, in *Case W. Res. Univ. v. Tracy*, 84 Ohio St.3d 316 (1999), the court reaffirmed the preceding decisions, concluding that the test for the exemption of a parking garage under these statutes is whether it "is an essential and integral part of the charitable and/or educational activities" of the charitable or educational institutions availing themselves of it.

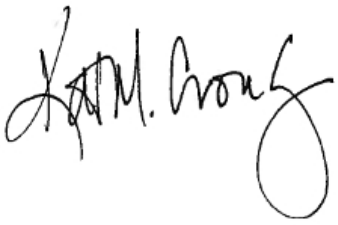
As previously indicated and highlighted in the commissioner's determination, the subject parking lot was intended to be used only by the city employees working at the Public Works Department; while it was represented that the restricted parking was never enforced, no explanation as to why the public was not welcome to park there from the outset was offered. Even now, the public is invited to park in the lot only after daily business hours and on weekends. While the subject arguably provides the city employees with a convenient place to park, there is no permitted use by the public, except on evenings and weekends, beginning sometime in 2016. If the city's contention that the public generally would not opt to park at the lot due to its lack of proximity to other venues is true, then we question why there are any parking restrictions imposed on the lot.

Upon our review of the foregoing precedent and the pertinent facts in the limited record, we find the facts in *State Teachers* indistinguishable from those herein. The city has failed to demonstrate that the subject property is essential and/or integral to the city's operations. Further, it has not been established that the lot is primarily used in furtherance of or incidental to the work of the city's Public Works Department, i.e., we find no "public purpose" in its use.

Accordingly, based upon the foregoing, we conclude that the city has not established through competent, probative evidence that the decision of the Tax Commissioner, in denying the requested exemption, was in error. Therefore, it is the decision of the Board of Tax Appeals that the Tax Commissioner's final determination is affirmed.

BOARD OF TAX APPEALS		
RESULT OF VOTE	YES	NO
Mr. Harbarger		
Ms. Clements		
Mr. Caswell		

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.



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Kathleen M. Crowley, Board Secretary